

TEACHERS' TENURE (EXCERPT)
Act 4 of 1937 (Ex. Sess.)

38.101 Teacher on continuing tenure; discharge, demotion, or retirement; continuation of contracts of teachers over retirement age.

Sec. 1. Except as otherwise provided in section 1a of this article, discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause and only as provided in this act. This act does not prevent any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under the public school employees retirement act of 1979, 1980 PA 300, MCL 38.1301 to 38.1408, or, having established a reasonable retirement age policy, from temporarily continuing on a year-to-year basis on criteria equally applied to all teachers the contract of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—Am. 1941, Act 119, Imd. Eff. May 23, 1941;—CL 1948, 38.101;—Am. 1966, Act 15, Imd. Eff. Apr. 6, 1966;—Am. 1993, Act 60, Eff. Oct. 1, 1993;—Am. 2005, Act 136, Eff. Jan. 1, 2006.

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38.102 Charges against teacher; filing with controlling board; decision to proceed upon charges; written statement of charges and teacher's rights.

Sec. 2. All charges against a teacher shall be made in writing, signed by the person making the charges, and filed with the secretary, clerk, or other designated officer of the controlling board, and a copy of the charges shall be provided to the teacher. The charges shall specify a proposed outcome of either discharge or a specific demotion of the teacher. The controlling board shall decide whether or not to proceed upon the charges, or may modify the charges and decide to proceed upon the charges as modified, not later than 10 days after the charges are filed with the controlling board. A decision to proceed upon the charges shall not be made except by a majority vote of the controlling board and shall be reduced to writing. The controlling board, if it decides to proceed upon the charges, shall furnish the teacher not later than 5 days after deciding to proceed upon the charges with the written decision to proceed upon the charges, a written statement of the charges and a statement of the teacher's rights under this article.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.102;—Am. 1967, Act 216, Imd. Eff. July 10, 1967;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

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TEACHERS' TENURE (EXCERPT)
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38.103 Suspension of teacher pending certain conditions; compensation.

Sec. 3. (1) On the filing of charges in accordance with this article, the controlling board may suspend the accused teacher from active performance of duty until 1 of the following occurs:

(a) The teacher fails to contest the decision to proceed upon the charges within the time period specified in section 4(1) of this article.

(b) A preliminary decision and order discharging or demoting the teacher is issued by the administrative law judge under section 4(5)(i) of this article.

(c) If the preliminary decision and order is to reinstate the teacher, a final decision and order is rendered by the tenure commission under section 4(5)(m) of this article.

(2) If a teacher is suspended as described in subsection (1), the teacher's salary shall continue during the suspension. However, if the teacher is convicted of a felony that is not a listed offense or of a misdemeanor that is a listed offense, the controlling board may discontinue the teacher's salary effective upon the date of the conviction. If the teacher is convicted of a felony that is a listed offense, the controlling board shall discontinue the teacher's salary effective upon the date of conviction. As used in this subsection, "listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(3) If a preliminary decision and order discharging a teacher is issued by the administrative law judge and the tenure commission subsequently reverses the preliminary decision and order of the administrative law judge, the tenure commission may order back pay.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.103;—Am. 1993, Act 60, Eff. Oct. 1, 1993;—Am. 2005, Act 124,

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38.104 Decision to proceed upon charges; appeal with tenure commission; filing; notice; conduct of hearing; dismissal of appeal or denial of discharge or demotion; appeal to court of appeals.

Sec. 4. (1) A teacher on continuing tenure may contest the controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission and serving a copy of the claim of appeal on the controlling board not later than 20 days after receipt of the controlling board's decision. The controlling board shall file its answer with the tenure commission and serve a copy of the answer on the teacher not later than 10 days after service of the claim of appeal. If the teacher does not contest the controlling board's decision in the time and manner specified in this subsection, the discharge or demotion specified in the charges takes effect and the teacher shall be considered to have waived any right to contest the discharge or demotion under this act.

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 60 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

(3) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, and in accordance with rules promulgated by the tenure commission.

(5) The hearing and tenure commission review shall be conducted in accordance with the following:

(a) The hearing shall be public or private at the option of the teacher.

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the tenure commission offices in Lansing. The administrative law judge's necessary travel expenses associated with conducting the hearing outside Lansing shall be borne equally by the tenure commission and the controlling board.

(c) Both the teacher and the controlling board may be represented by legal counsel.

(d) Testimony at the hearing shall be on oath or affirmation.

(e) A stenographer shall make a full record of the proceedings of the hearing. The cost of employing the stenographer and of providing the record shall be borne equally by the tenure commission and the controlling board.

(f) The administrative law judge may subpoena witnesses and documentary evidence on his or her own motion, and shall do so at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, the party on whose behalf the subpoena was issued may file a petition in the circuit court for the county in which the hearing is held for an order requiring compliance. Failure to obey such an order of the court may be punished by the court as contempt.

(g) The hearing shall be concluded not later than 90 days after the teacher's claim of appeal was filed with the tenure commission.

(h) The administrative law judge shall make the necessary orders to ensure that the case is submitted for decision not later than 50 days after the hearing is concluded.

(i) Not later than 60 days after submission of the case for decision, the administrative law judge shall serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission. The preliminary decision and order shall grant, deny, or modify the discharge or demotion specified in the charges.

(j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, rulings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of

the other parties within the time limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.

(k) Not later than 10 days after being served with the other party's exceptions and brief, a party may file a statement of cross-exceptions responding to the other party's exceptions or a statement in support of the preliminary decision and order with the tenure commission, along with a written brief in support of the cross-exceptions or of the preliminary decision and order. The party shall serve a copy of the statement of cross-exceptions or of the statement in support of the preliminary decision and order and a copy of the brief on each of the other parties.

(l) A matter that is not included in a statement of exceptions filed under subdivision (j) or in a statement of cross-exceptions filed under subdivision (k) is considered waived and cannot be heard before the tenure commission or on appeal to the court of appeals.

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

(6) After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's rules.

(7) A party aggrieved by a final decision and order of the tenure commission may appeal the decision and order to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.104;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)

Act 4 of 1937 (Ex. Sess.)

38.104a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.

Sec. 4a. (1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a hearing held under this article in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The controlling board shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

History: Add. 1987, Act 47, Eff. Jan. 1, 1988;—Am. 1998, Act 326, Imd. Eff. Aug. 3, 1998.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
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38.105 Necessary reduction in personnel; first vacancy.

Sec. 5. For a period of 3 years after the effective date of the termination of the teacher's services, a teacher on continuing tenure whose services are terminated because of a necessary reduction in personnel shall be appointed to the first vacancy in the school district for which the teacher is certificated and qualified. However, for a teacher on continuing tenure in a school district whose services were terminated before the effective date of the amendatory act that added this sentence, the teacher's right under this section to be appointed to the first vacancy in the school district for which the teacher is certificated and qualified shall continue for a period of 3 years after the effective date of the amendatory act that added this sentence. This section does not prevent a school district from reemploying after the 3-year period specified in this section a teacher described in this section who was previously employed in that school district.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.105;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

Constitutionality: Neither the teacher tenure act nor due process requires a full evidentiary hearing by a school board before the board may remove from a recall list the name of a laid-off teacher who has abandoned the right to recall. *Tomiak v. Hamtramck School District*, 426 Mich. 678, 397 N.W.2d 770 (1986).

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
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38.111 Resignation or leave of absence; notice required.

Sec. 1. No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least 60 days before September first of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.111.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
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38.112 Leave of absence; physical or mental disability.

Sec. 2. Any controlling board upon written request of a teacher may grant leave of absence for a period not to exceed 1 year, subject to renewal at the will of the board: Provided, That without request, leave of absence because of physical or mental disability may be granted by any controlling board for a period not to exceed 1 year: Provided further, That any teacher so placed on leave of absence shall have the right to a hearing on such unrequested leave of absence in accordance with the provisions for a hearing in article 4, section 4 of this act: Provided, That no leave of absence shall serve to terminate continuing tenure previously acquired under this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.112.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
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38.121 Appeal to state tenure commission; notice; hearing.

Sec. 1. A teacher who has achieved continuing tenure status may appeal to the tenure commission any decision of a controlling board under this act, other than a decision governed by article IV on discharge or demotion of a teacher on continuing tenure, within 20 days from the date of the decision. The tenure commission shall provide for a hearing on the appeal. Notice and conduct of the hearing shall be the same as provided in article IV and in rules promulgated by the tenure commission.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.121;—Am. 1963, Act 242, Eff. Sept. 6, 1963;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

Administrative rules: R 38.131 et seq. of the Michigan Administrative Code.

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Act 4 of 1937 (Ex. Sess.)

38.131 State tenure commission; creation, membership; superintendent as ex-officio secretary; legal advisor.

Sec. 1. There is hereby created a state tenure commission of 5 members: 2 of whom shall be classroom instructors, 1 a member of a board of education of a graded or city school district, 1 a person not a member of a board of education or a teacher, and 1 a superintendent of schools. The superintendent of public instruction shall be ex officio secretary of the commission, and the attorney general shall assign to the commission an assistant who shall be legal advisor to the commission.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.131;—Am. 1963, Act 242, Eff. Sept. 6, 1963.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
Act 4 of 1937 (Ex. Sess.)

38.132 Tenure commission; members, appointment, terms, vacancies.

Sec. 2. Within 30 days after the effective date of this act, the governor shall appoint the members of the tenure commission for the following terms: One for a term of 3 years, 1 for a term of 2 years and 1 for a term of 1 year. Each term shall begin on the first day of September. Immediately preceding the expiration of their respective terms the governor shall appoint succeeding members of the tenure commission for terms of 5 years. In the event of a vacancy on the tenure commission the governor shall immediately appoint a successor to complete the unexpired term.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.132.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
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38.133 Tenure commission; geographical qualifications of members.

Sec. 3. Not more than 1 member of the tenure commission shall be appointed from any 1 school district.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.133.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
Act 4 of 1937 (Ex. Sess.)

38.134 Tenure commission; qualifications of teacher member.

Sec. 4. Any teacher appointed to the tenure commission after September 1, 1938, must be on continuing tenure.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.134.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
Act 4 of 1937 (Ex. Sess.)

38.137 Tenure commission; powers.

Sec. 7. The tenure commission is hereby vested with such powers as are necessary to carry out and enforce the provisions of this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.137.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)
Act 4 of 1937 (Ex. Sess.)

38.138 Tenure commission; compensation and expenses.

Sec. 8. The per diem compensation of the state tenure commission and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.138;—Am. 1965, Act 8, Imd. Eff. Apr. 8, 1965;—Am. 1975, Act 56, Imd. Eff. May 20, 1975.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)

Act 4 of 1937 (Ex. Sess.)

38.139 Tenure commission; board of review for cases appealed from decision of controlling board; location of records; availability of certain writings to public.

Sec. 9. (1) The tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board. All records of the tenure commission shall be kept in the office of the superintendent of public instruction.

(2) A writing prepared, owned, used in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.139;—Am. 1963, Act 242, Eff. Sept. 6, 1963;—Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)

Act 4 of 1937 (Ex. Sess.)

38.140 Tenure commission; organizational meeting, election of officers, rules and regulations.

Sec. 10. Within 30 days after the effective date of this act, the tenure commission shall hold a meeting in the city of Lansing for the purpose of organization and the election of a chairman and secretary, both of whom shall be members of the commission. The tenure commission shall draw up rules and regulations and shall have the power to amend same and to provide for the conduct of its affairs in such manner as shall be consistent with the provisions of this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.140.

Popular name: Teachers' Tenure Act

Administrative rules: R 38.131 et seq. of the Michigan Administrative Code.

TEACHERS' TENURE (EXCERPT)

Act 4 of 1937 (Ex. Sess.)

38.151 Application of act.

Sec. 1. This act shall apply to all school districts of the state.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.151;—Am. 1964, Act 2, Eff. Aug. 28, 1964.

Popular name: Teachers' Tenure Act

TEACHERS' TENURE (EXCERPT)

Act 4 of 1937 (Ex. Sess.)

38.172 Teachers; waiver of rights in contracts prohibited.

Sec. 2. No teacher may waive any rights and privileges under this act in any contract or agreement made with a controlling board. In the event that any section or sections of a contract or agreement entered into between a teacher and a controlling board make continuance of employment of such teacher contingent upon certain conditions which may be interpreted as contrary to the reasonable and just causes for dismissals, provided by this act, such section or sections of a contract or agreement shall be invalid and of no effect in relation to determination of continuance of employment of such teacher.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.172.

Popular name: Teachers' Tenure Act